

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CIVIL ACTION NO. 3:13-cv-00529-RJC-DCK

NOW COME Greenwood Motor Lines, Inc. d/b/a R+L Carriers and R&L Transfer, Inc. (collectively herein, the “R+L Plaintiffs”), by and through their undersigned counsel and pursuant to Rule 24 of the Federal Rules of Civil Procedure and LCvR 7.1, and move the Court for an order permitting the R+L Plaintiffs to intervene as Plaintiffs in this action and to file a Complaint in order to assert claims against the Defendants. A copy of the R+L Plaintiffs’ proposed complaint in intervention is attached to this motion as Exhibit A. In support of this motion, the R+L Plaintiffs, in addition to the memorandum of law contemporaneously filed with this motion, respectfully show the Court:

1. Plaintiff Christopher Pracht, as personal representative of the Estate of Eric F. Lee, (“Plaintiff”) filed a Complaint in the Superior Court Division of Gaston County, North

Carolina (File No. 13-CVS-3166) on August 15, 2013 against Defendants Saga Freight Logistics, LLC (“Saga”) and Tomas Herrera, Jr. (“Herrera”). [Doc. 1-1.]

2. On September 23, 2013, Defendant Saga timely filed its Petition for Removal of this action pursuant to 28 U.S.C. § 1446(b). [Doc. 1.]

3. On September 23, 2013, Defendant Saga filed its Answer to Plaintiff’s Complaint. [Doc. 3.]

4. Plaintiff’s Complaint alleges a claim against the Defendants for wrongful death based on a tractor trailer accident, which occurred on October 13, 2011, involved tractor trailers being operated by Eric F. Lee (“Lee”) and Tomas Herrera, Jr., and resulted in the death of Eric F. Lee (“the Accident”). [Doc. 1-1.]

5. The basis of Plaintiff’s wrongful death claim is the negligence and gross negligence of Defendant Saga and Defendant Herrera. [Doc. 1-1, p. 10-11, ¶ 52-54.]

6. At the time of the Accident, Lee was operating a tractor owned and operated by the R+L Plaintiffs and under the employment of R&L Carriers Shared Services, L.L.C.. [Ex. A, p. 3, ¶ 10-11.]

7. The R+L Plaintiffs sustained damage as result of the Accident, including, but not limited to property damage to the R+L Plaintiffs’ tractor, trailer, and its contents and costs and expenses related to cleanup, tow services, the loss of use and revenue related to the tractor and trailer. [Ex. A, p. 4, ¶ 26-27.]

8. The basis of the R+L Plaintiffs’ claim for the recovery of its damages is the negligence of Defendant Saga and Defendant Herrera. [Ex. A, p. 4-6, ¶ 29-33.]

9. The R+L Plaintiffs have an interest in the outcome of the main action and in pursuing the damages it sustained as a result of the Accident from the Defendants.

10. Disposing of this matter without the R+L Plaintiffs' involvement will impede the R+L Plaintiffs' ability to protect their interests.

11. None of the existing parties can adequately represent the interests of the R+L Plaintiffs.

12. The R+L Plaintiffs' claims share common questions of law and fact with the main action in this matter.

13. Therefore, pursuant to Rule 24(a) and 24(b) of the Federal Rules of Civil Procedure, the R+L Plaintiffs request this Court allow them to intervene in this action to assert their claims for damage against Defendants Sara and Herrera.

14. In addition, Defendant Saga's Answer denies liability to Plaintiff Lee and asserts various defenses, including the defense of Employer Negligence pursuant to N.C. Gen. Stat. § 97-10.2(e), alleging that the negligence on the part of the Plaintiff's employer – R&L Carriers Shared Services, L.L.C., an entity related to the R+L Plaintiffs – contributed to cause the accident. [Doc. 3, p. 5.]

15. Pursuant to N.C. Gen. Stat. § 97-10.2(e), R&L Carriers Shared Services, L.L.C. will have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the jury in this matter.

16. This motion is timely filed and not for the purpose of delay.

17. Pursuant to LCvR 7.1, the undersigned counsel has conferred and/or attempted to confer with counsel for Plaintiff and counsel for Defendant Saga Logistics prior to the filing of this Motion.¹ Counsel for Defendant Saga has indicated he does not object to this motion. The undersigned counsel attempted to confer with Plaintiff's counsel via telephone and e-mail on

¹ Upon information and belief, as of the date of this motion, Defendant Herrera has not been served with the Complaint, filed an answer, or made an appearance in this matter.

Thursday, October 31, 2013. As of the filing of this motion, the undersigned counsel has not received a response from Plaintiff's counsel with their positions regarding the R+L Plaintiffs' Motion to Intervene.

WHEREFORE, R+L Carriers moves that this Court:

1. Grant its Motion to Intervene and allow it to file the proposed Complaint attached as Exhibit A;
2. Grant any other relief the Court as may deem appropriate.

This is the 1st day of November, 2013.

CRANFILL SUMNER & HARTZOG LLP

BY: /s/ Matthew K. Lilly
Samuel H. Poole, Jr.
NC State Bar No. 13659
Matthew K. Lilly
NC State Bar No. 38316
Post Office Box 30787
Charlotte, North Carolina 28230
Telephone (704) 332-8300
Facsimile (704) 332-9994
E-mail: mlilly@cshlaw.com
*Attorneys for Greenwood Motor Lines, Inc. d/b/a
R+L Carriers, R&L Transfer, Inc., and R&L
Carriers Shared Services, L.L.C.*

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing ***Motion to Intervene*** on all parties to this cause by:

Electronically filing the foregoing with the Clerk of Court using the CM/ECF system which will send electronic notification of such filing to the following:

Dawn T. Mistretta
R. Austin Oyler
Strauch Green & Mistretta, P.C.
530 North Trade Street, Suite 303
Winston-Salem, NC 27010
dmistretta@sgandm.com
aoyler@sgandm.com
Attorneys for Plaintiff Pracht

Christopher M. Kelly
Gillian S. Crowl
Gallivan, White & Boyd, P.A.
6805 Morrison Blvd., Suite 200
Charlotte, NC 28210
ckelly@gwblawfirm.com
gcrowl@gwblawfirm.com
Attorneys for Defendant Saga Freight Logistics, LLC

This is the 1st day of November, 2013.

CRANFILL SUMNER & HARTZOG LLP

BY: /s/ Matthew K. Lilly
Samuel H. Poole, Jr.
NC State Bar No. 13659
Matthew K. Lilly
NC State Bar No. 38316
Post Office Box 30787
Charlotte, North Carolina 28230
Telephone (704) 332-8300
Facsimile (704) 332-9994
E-mail: mlilly@cshlaw.com
Attorneys for Greenwood Motor Lines, Inc. d/b/a R+L Carriers, R&L Transfer, Inc., and R&L Carriers Shared Services, L.L.C.